

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:CTR:HAR:TL-N-~~20360-99~~
REMarum 2360-99

date: June 11, 1999

to: Chief, Examination Division, Connecticut-Rhode Island District
Attn: Meg Bonner, Acting G/M 1307

from: District Counsel, Connecticut-Rhode Island District, E. Hartford

subject: Unagreed Employment Tax Issue Relating to [REDACTED] Expatriates
Employed by Nine Companies
Re: [REDACTED] ([REDACTED])

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Reference is made to the memorandum dated March 29, 1999, from Don Segal requesting our opinion with respect to this case. For the reasons set forth below, it is our opinion that the nine [REDACTED] companies should be separately assessed the full additional tax pertaining to FICA and federal withholding liabilities for the [REDACTED] expatriates employed among the nine companies.

The following facts have been gleaned from your memorandum and telephone conversations between Robert E. Marum of this office and Don Segal, Meg Bonner, and Carol Long:

The taxpayer identified the following nine [REDACTED] companies, employing expatriate and/or foreign national employees in [REDACTED]:

1. [REDACTED] ([REDACTED])
2. [REDACTED].
3. [REDACTED]
4. [REDACTED]
5. [REDACTED].
6. [REDACTED]
7. [REDACTED].

8. [REDACTED].
9. [REDACTED].

Each company files a separate Form 941. A Form SS-10 was secured for each of the 9 companies, and the statute for [REDACTED] was extended to [REDACTED]. The sole unagreed issue relates to whether the value of compensation paid by an employer to an income tax return preparer for tax preparation fees and related accounting services is includible in the expatriate's gross income.

The examiner issued a number of IDRs to [REDACTED] for additional information. While [REDACTED] estimated it paid \$[REDACTED] to the return preparers, it failed to provide detailed documentation, such as that needed to determine the proper amount of tax for each of the [REDACTED] employees to which income is being imputed under the adjustment and which of the nine companies employed each expatriate. [REDACTED] is contesting the adjustment and wishes to have Appeals consider the issue.

The Service's position is that the employer is liable for the payment of the additional tax, i.e. FICA and federal withholding. Since the case is unagreed, you requested advice as to which company/companies should be assessed the tax for each of the [REDACTED] expatriates.

At this point, it would be arbitrary for the Service, lacking definitive information from [REDACTED] pursuant to the IDRs, to make its own independent determination as to how the \$[REDACTED] should be divvied up among the 9 companies. We view the Service as having two alternatives at present: (1) issue a summons to [REDACTED] for the information needed; or (2) set up each of the 9 companies for the full amount of the assessment, in essence adopting a whipsaw position. We view (2) to be the more viable option, as a summons would not stop the running of the statute of limitations, which was extended to [REDACTED]. Moreover, [REDACTED] is anxious to have Appeals consider the issue, and (2) would expedite that result. Further, (2) will ensure that the revenue is protected.

In conclusion, we recommend that the full adjustment be separately assessed against each of the 9 companies.

Please note that this opinion is based upon the facts set forth herein. Should you determine that the facts are different, you should not rely upon this opinion without conferring with this office, as our opinion might change. Further, this opinion is subject to post-review in our National Office. That review might result in modifications to the conclusions herein. Should

our National Office suggest any material change in the advice, we will inform you as soon as we hear from that Office.

This case is assigned to Robert E. Marum, who may be reached at (860) 290-4068 should you have any further questions.

BRADFORD A. JOHNSON
Assistant District Counsel

By: _____

ROBERT E. MARUM
Attorney